HOUSE BILL No. 1669

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-6.1-1.1; IC 6-3.1.

Synopsis: Enterprise zone incentives. Increases the amount of the enterprise zone loan interest credit from 5% to 15% of the interest received from qualified loans. Allows a taxpayer to assign the enterprise zone investment cost credit. Provides that trusts, estates, corporations, and pass through entities that make qualified investments in enterprise zone businesses may claim the enterprise zone investment cost credit. (Current law allows only individuals to claim the credit, except in Vigo County where pass through entities are also eligible.) Establishes the enterprise zone job creation tax credit.

Effective: January 1, 2000 (retroactive); January 1, 2006.

Hinkle, Klinker, Ayres

January 19, 2005, read first time and referred to Committee on Ways and Means.

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1669

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 4-4-6.1-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 1.1. As used in this chapter, "zone business" means any entity that accesses at least one (1) tax credit or exemption incentive available under this chapter, IC 6-1.1-20.8, ~~or~~ IC 6-3-3-10, **IC 6-3.1-7, IC 6-3.1-10, or IC 6-3.1-29.**

SECTION 2. IC 6-3.1-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 2. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year if the taxpayer:

(1) receives interest on a qualified loan in that taxable year;
(2) pays the registration fee charged to zone businesses under IC 4-4-6.1-2;
(3) provides the assistance to urban enterprise associations required from zone businesses under IC 4-4-6.1-2(b); and
(4) complies with any requirements adopted by the enterprise zone board under IC 4-4-6.1 for taxpayers claiming the credit under this chapter.

However, if a taxpayer is located outside of an enterprise zone, subdivision (4) does not require the taxpayer to reinvest its incentives under this section within the enterprise zone, except as provided in subdivisions (2) and (3).

(b) The amount of the credit to which a taxpayer is entitled under this section is ~~five~~ **fifteen** percent ~~(5%)~~ **(15%)** multiplied by the amount of interest received by the taxpayer during the taxable year from qualified loans.

(c) If a pass through entity is entitled to a credit under subsection (a) but does not have state tax liability against which the tax credit may be applied, an individual who is a shareholder, partner, beneficiary, or member of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder, partner, beneficiary, or member is entitled.

The credit provided under this subsection is in addition to a tax credit to which a shareholder, partner, beneficiary, or member of a pass through entity is entitled. However, a pass through entity and an individual who is a shareholder, partner, beneficiary, or member of a pass through entity may not claim more than one (1) credit for the qualified expenditure.

SECTION 3. IC 6-3.1-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]: Sec. 4. ~~(a)~~ As used in this chapter, "taxpayer" means any: ~~individual that has any state tax liability.~~

(1) person;

(2) corporation; or

(3) pass through entity;

that has any state tax liability.

~~(b) Notwithstanding subsection (a), for a credit for a qualified investment in a business located in an enterprise zone in a county having a population of more than one hundred five thousand (105,000) but less than one hundred ten thousand (110,000), "taxpayer" includes a pass through entity.~~

SECTION 4. IC 6-3.1-10-10 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2000 (RETROACTIVE)]: **Sec. 10. (a) A taxpayer may assign any part of the credit to which the taxpayer is entitled under this chapter to another taxpayer. An assignment under this subsection must be in writing. A credit that is assigned under this**

subsection remains subject to this chapter.

(b) An assignment under subsection (a) must be reported on the state tax returns of the taxpayer and the assignee for the year in which the assignment is made in the manner prescribed by the department. The taxpayer may not receive value in connection with the assignment under subsection (a) that exceeds the value of the part of the credit assigned.

(c) A taxpayer that assigns a tax credit under this section shall contribute at least fourteen percent (14%) of the proceeds of the assignment to the urban enterprise association established under IC 4-4-6.1 for the enterprise zone in which the taxpayer is located.

(d) After making the contribution required under subsection (c), a taxpayer that assigns a tax credit under this section shall reinvest the remaining proceeds of the assignment in the taxpayer's enterprise zone operations.

SECTION 5. IC 6-3.1-29 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2006]:

Chapter 29. Enterprise Zone Job Creation Tax Credit

Sec. 1. As used in this chapter, "base taxable year" means either:

(1) in the case of a taxpayer that has not previously claimed a tax credit under this chapter, the taxpayer's taxable year that immediately precedes the taxable year for which the taxpayer first claims a credit under this chapter; or

(2) in the case of a taxpayer that has previously claimed a tax credit under this chapter, the most recent taxable year for which the taxpayer claimed a credit under this chapter.

Sec. 2. As used in this chapter, "board" refers to the enterprise zone board created by IC 4-4-6.1-1.

Sec. 3. As used in this chapter, "enterprise zone" means an enterprise zone created under IC 4-4-6.1.

Sec. 4. As used in this chapter, "full-time employee" means an individual who:

(1) is employed for consideration for at least thirty-five (35) hours each week; or

(2) renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

Sec. 5. (a) As used in this chapter, "new employee" means a full-time employee who is:

(1) first employed by a taxpayer at the employer's enterprise zone location; and

(2) employed after December 31 of the employer's previous taxable year.

(b) The term "new employee" does not include:

(1) an employee of a taxpayer who performs a job that was previously performed by another employee, if that job existed for at least six (6) months before hiring the new employee;

(2) an employee of a taxpayer who was previously employed in Indiana by a related member of the taxpayer and whose employment was shifted to the taxpayer after the taxpayer entered into the tax credit agreement; or

(3) a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, of any individual who is an employee of the taxpayer and who has a direct or an indirect ownership interest of at least five percent (5%) in the profits, capital, or value of the taxpayer. For purposes of this chapter, an ownership interest shall be determined in accordance with Section 1563 of the Internal Revenue Code and regulations prescribed under that Section.

(c) Notwithstanding subsection (b)(1), if a new employee performs a job that was previously performed by an employee who was:

(1) considered a new employee under this chapter; and

(2) promoted by the taxpayer to another job;

the employee may be considered a new employee.

Sec. 6. As used in this chapter, "pass through entity" has the meaning set forth in IC 6-3.1-10-1.7.

Sec. 7. As used in this chapter, "related member" has the meaning set forth in IC 6-3.1-13-8.

Sec. 8. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (adjusted gross income tax);

(2) IC 6-5.5 (financial institutions tax); and

(3) IC 27-1-18-2 (insurance premiums tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 9. As used in this chapter, "taxpayer" means a person, corporation, or pass through entity that has any state tax liability and conducts business operations in an enterprise zone.

Sec. 10. (a) A taxpayer is entitled to a credit against the taxpayer's state tax liability for a taxable year equal to the amount determined under the following STEPS:

STEP ONE: Determine the lesser of:

(A) the number of new employees employed at the taxpayer's enterprise zone location in the taxable year; or

(B) the result of:

(i) the total number of full-time employees employed by the taxpayer at the taxpayer's enterprise zone location in the taxable year; minus

(ii) the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year.

STEP TWO: Multiply the amount determined under STEP ONE by two thousand dollars ($2,000).

(b) A taxpayer may petition the board to adjust the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year if the taxpayer shows that:

(1) a new investment;

(2) a new product line; or

(3) other similar circumstances;

will result in the creation of new full-time jobs at the taxpayer's enterprise zone location but would not qualify the taxpayer for a credit under this chapter because employment at the enterprise zone location would remain below the level established in the taxpayer's base taxable year.

(c) The board shall consider a petition submitted under subsection (b). The board may approve a taxpayer's petition if the board determines that adjusting the total number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year is in the best interest of the enterprise zone in which the taxpayer is located. If the board approves the petition, the board shall determine the new number of full-time employees employed at the taxpayer's enterprise zone location in the taxpayer's base taxable year, that in the board's discretion, fairly and reasonably represents the taxpayer's employment situation under the totality of the circumstances described in the taxpayer's petition. The board shall certify the new number to be used for purposes of this chapter to the taxpayer and the department.

Sec. 11. (a) If the credit amount determined under section 10 of this chapter for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to the following taxable years. The amount of the credit

carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year. A taxpayer is not entitled to a carryback.

(b) A taxpayer is not entitled to a refund of any unused credit.

Sec. 12. If a pass through entity does not have state income tax liability against which the tax credit may be applied, a shareholder or partner of the pass through entity is entitled to a tax credit equal to:

(1) the tax credit determined for the pass through entity for the taxable year; multiplied by

(2) the percentage of the pass through entity's distributive income to which the shareholder or partner is entitled.

Sec. 13. To receive the credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's state tax return in the manner prescribed by the department. The taxpayer must submit to the department all information that the department determines is necessary for the calculation of the credit provided by this chapter.

SECTION 6. [EFFECTIVE JANUARY 1, 2006] **(a) IC 6-3.1-7-2, as amended by this act, applies to taxable years beginning after December 31, 2005.**

(b) IC 6-3.1-10-4, as amended by this act, applies to taxable years beginning after December 31, 2005.

(c) IC 6-3.1-10-10, as added by this act, applies to taxable years beginning after December 31, 2005.

(d) IC 6-3.1-29, as added by this act, applies only to taxable years beginning after December 31, 2005.

SECTION 7. **An emergency is declared for this act.**